

**CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION**

CASE NO. 3960

Heard in Montreal, Wednesday, 15 December 2010

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Discharge of Ms. Corinne O'Brien due to accumulation of demerit points, in excessive of 60 demerits, as follows; The assessment of 15 demerit points for, "Late book off of your assignment and resultant delay to assignment 2359 Oakville yard on March 25, 2009." The assessment of 20 demerit points for, "Delay to assignment while working as Locomotive Engineer on assignment L534 on October 11, 2009."

JOINT STATEMENT OF ISSUE:

On March 30, 2009 Ms. O'Brien was required to attend a formal investigation in connection with the circumstances surrounding; Your late book off of your assignment and the resultant delay to assignment 2359 Oakville Yard on March 25, 2009. Following the investigation, the Company issued a Discipline Form 780 dated April 3, 2009 assessing Ms. O'Brien 15 demerit points.

On December 17, 2010 Ms. O'Brien was required to attend a formal investigation in connection with the circumstances surrounding; Delay to assignment while working as Locomotive Engineer on assignment L534 on October 11, 2009." Following the investigation, the Company issued a Discipline Form 780 dated January 3, 2010 assessing Ms. O'Brien 20 demerit points. Also on January 3, 2010 the Company issued a Discipline Form 780 discharging Ms. O'Brien for Accumulation of demerits.

The Union contends the discipline assessed unwarranted and requests the removal of such. The Union requests that the discipline assessed Ms. O'Brien be reduced to a level that would preclude her dismissal.

The Company disagrees.

**FOR THE UNION:
(SGD.) P. VICKERS
GENERAL CHAIRMAN**

**FOR THE COMPANY:
(SGD.) J. LIEPELT
SR. VICE-PRESIDENT, EASTERN REGION**

There appeared on behalf of the Company:

- D. Gagné – Sr. Manager, Labour Relations, Montreal
- S. Fusco – Manager, Labour Relations, Toronto
- B. Hogan – Manager, Labour Relations, Toronto

There appeared on behalf of the Union:

- J. C. Morrison – Counsel, London
- P. Vickers – General Chairman, Sarnia
- P. Boucher – Local Chairman, Belleville
- C. O'Brien – Grievor

AWARD OF THE ARBITRATOR

The instant award involves two heads of discipline resulting in the grievor's discharge for the accumulation of demerits. The first incident occurred on March 25, 2009. On that date the grievor was scheduled to commence work as a locomotive engineer on a yard assignment at Oakville, with a commencement time of 23:59. The record discloses, without controversy, that at or about 23:00 the grievor's eldest daughter, aged 15, who was responsible for being in charge of the grievor's other children while she was at work, was taken violently ill. As a result, the grievor called the Company to advise that she would be unable to make her scheduled shift. It is common ground that she did so after the booking off time limit of two hours in advance of her scheduled tour of duty. Following an investigation the grievor was assessed fifteen demerits for that late book-off. As her prior record stood at forty demerits, that brought her disciplinary record to a total of fifty-five demerits.

The second incident occurred on October 11, 2009. On that day the grievor was some fifteen minutes later for her assignment. It would seem that she erroneously

reported for work at Mimico, when in fact her reporting location was Oakville. It would seem that when she arrived at Mimico some fifteen minutes prior to her start time she realized her error and called the Oakville Yard to advise that she was on her way. Following a disciplinary investigation the grievor was assessed twenty demerits for that incident, which caused her discharge for the accumulation of demerits.

The Arbitrator has some difficulty with the overall disciplinary treatment of Ms. O'Brien by the Company. Firstly, on what basis can it be found that she was at fault for her late book-off on March 25, 2009? There is no challenge to the grievor's account of the events, including the fact that her daughter, who was to care for her other children during her tour of duty, was unexpectedly taken violently ill approximately one hour before the time her shift was to commence. There is no suggestion that as a matter of practical reality the grievor could have called the Company two hours in advance of her tour of duty to advise that she would be unable to attend at work. In the Arbitrator's respectful view, there is simply no culpable conduct disclosed on the facts of that incident, and there was no basis for the assessment of fifteen demerits, even accepting that the grievor booked off "late" in relation to the commencement of her assignment. She did so, I am satisfied, entirely because of unpredictable facts beyond her control.

On the material before the Arbitrator it cannot be disputed that the grievor's arriving late to work on October 11, 2009 was not the first such occurrence. She had been assessed fifteen demerits for precisely the same infraction on February 23, 2006 and had a number of prior instances of discipline for failing to protect her assignment or

failing to comply with the Company's attendance policies. In the circumstances, the Arbitrator finds it difficult to conclude that the assessment of twenty demerits was not appropriate. On its face, that would result in the accumulation of sixty demerits, given the Arbitrator's disposition of the first head of grievance, as described above.

However, the question becomes whether termination of an employee of twenty-three years' service is justified, in all of the circumstances. In the Arbitrator's view this is an appropriate case for a substitution of penalty, albeit one which does not involve any order of compensation. There is, I think, reason to believe that the grievor can be made to understand the importance of respecting attendance norms on a consistent basis.

The grievance is therefore allowed, in part. The Arbitrator directs that the grievor be reinstated into her employment forthwith, without loss of seniority and without compensation for any wages or benefits lost. The twenty demerits shall be removed from her record and a suspension substituted for the period between her termination and reinstatement.

December 22, 2010

(signed) MICHEL G. PICHER
ARBITRATOR